

STATE OF MICHIGAN
COURT OF APPEALS

LAURIE MACDONALD, Personal Representative
of the Estate of JAMES MARK MACDONALD,
Deceased,

Plaintiff-Appellant,

v

HEIGHTS MARINA,

Defendant-Appellee.

UNPUBLISHED

July 8, 2003

No. 235622

Roscommon Circuit Court

LC No. 99-721037-NI

BRIAN BUDRY,

Plaintiff-Appellant,

v

HEIGHTS MARINA,

Defendant-Appellee.

No. 235623

Roscommon Circuit Court

LC No. 99-721401-NI

Before: Smolenski, P.J., and Griffin and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(10). This case arose when plaintiff Laurie MacDonald's deceased husband, James MacDonald, and plaintiff Brian Budry drove snowmobiles into an obstacle on Houghton Lake's frozen surface while intoxicated. The snowmobiles became airborne and then crashed into defendant Heights Marina's pier, seriously injuring Budry and killing James. We affirm.

Plaintiffs argue that the trial court erroneously granted defendant's summary disposition motion because of the opinion of an investigating police officer. The officer personally viewed the accident scene and reported that the snowmobiles struck a natural ice crack. Plaintiffs' expert opined that the snowmobilers hit snow-covered concrete blocks negligently left in the lake

by defendant. We review de novo a trial court's decision to grant summary disposition under MCR 2.116(C)(10). *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817.

Summary disposition is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10). When a nonmoving party bears the burden of proof on an issue, "the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). When the issue is whether a plaintiff can establish causation in fact through circumstantial evidence, the plaintiff must present evidence from which a jury can reasonably infer that the defendant's conduct caused the injury. *Skinner v Square D Co*, 445 Mich 153, 164; 516 NW2d 475 (1994). "[T]he plaintiff must present substantial evidence from which a jury may conclude that more likely than not, but for the defendant's conduct, the plaintiff's injuries would not have occurred." *Id.* at 164-165.

In this case, plaintiffs presented photographs that depicted both ice cracks and concrete blocks, but no evidence that the snowmobiles hit a concrete block and not an ice crack. Plaintiffs' expert evidence is legally insufficient because plaintiffs failed to present the evidence supporting the expert's bald assertions. See, e.g., *Badalamenti v William Beaumont Hosp-Troy*, 237 Mich App 278, 288-289; 602 NW2d 854 (1999). While measurements of the snowmobiles' impact points exist, plaintiffs failed to show that those measurements corresponded with the location of any concrete blocks. While plaintiffs presented photographs depicting concrete blocks in the vicinity of where the snowmobiles became airborne, a reasonable juror would be forced to guess whether the snowmobiles hit the crack or a block. See, e.g., *Skinner, supra* at 174-175, and *Karbel v Comerica Bank*, 247 Mich App 90; 635 NW2d 69 (2001) (Griffin, J.). In fact, plaintiffs' strongest photographic evidence that the blocks caused the accident also demonstrates the extensive natural cracking and buckling the ice underwent in that area of the lake.

Because the trial court did not err when it granted summary disposition, we need not address plaintiffs' other issues on appeal.

Affirmed.

/s/ Michael R. Smolenski

/s/ Richard Allen Griffin

/s/ Peter D. O'Connell